IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 362 OF 2007.

Rakesh Chiba Patel .. Petitioner.
V/s
Union Territory of Diu Daman
Daman Police station ..Respondent.
And
Vijay @ Mahesh Inshwar Patel and others..formal Parties

Mr.S.S.Butala, Advocate for the applicant.
Mr.D.A. Nalawade, Advocate for the respodnent No.1.
Mrs.M.M. Deshmukh, A.PP for the State.

CORAM : J.H. BHATIA, J.

DATE : 11TH APRIL, 2007.

P.C.

. Heard Mr Butala, learned Counsel for the Petitioner and Mr. Nalawade, learned Advocate for the respondent No.1. Perused the order passed by the Sessions Judge Daman.

2. A Tempo bearing No.GJ-15-X-6798 belonging to the present petitioner was seized by the police in connection with Crime No.176/2006 registered by Police Station Daman for the offences punishable under section 394, 397, 302, 201 and 120B read with Section 34 of Indian Penal Code on the ground that the said tempo was used at the time of commission of the offence. The

petitioner moved an application before the learned Sessions Judge, for giving custody of the vehicle to him on the ground that he had purchased it by taking loan and this is the only source of his earning and that the tempo is lying at the police station and therefore it is likely to be rusted. As the prosecution had opposed the application, the learned Sessions Judge rejected the application mainly on the ground that the vehicle was used in commission of the crime and that some of the accused were yet to be arrested. Therefore, the petitioner has filed this writ petition seeking direction to give custody of the same to him.

3. After some discussion at the bar Mr. Nalawade learned Counsel for respondent No.1 concedes that subject to some conditions the petition may be allowed. I find that the petitioner himself is not one of the accused in the matter. Merely because his tempo was hired and was used at the time of commission of the offence can be no ground to refuse the custody of the vehicle to him, pending final hearing and disposal of the case. If the vehicle remains in open, it is likely to be rusted beyond repairing and it may cause irreparable loss to the petitioner.

4. Therefore, the petition is allowed. The said Tempo No.GJ-15-X-6798 be handed over to the petitioner on his executing bond in sum of Rs. 1 Lakh to produce the vehicle as and when required in connection with the said crime with further conditions that he shall not alienate the same to any third person nor he He shall not modify the same and the registration certificate book of the said vehicle shall be retained by the police but the certified true copy of that R.C. Book shall be given to the petitioner, clearly stating that the original is with the police.

(J.H. BHATIA, J.)